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ABATEMENT.

See ACTION, 1, 2, 3.

ACCORD AND SATISFACTION.

See VERDICT, 1.

ACTION.

1. The question, whether a cause of action survives to the personal representative of a deceased person, is a question, not of procedure, but of right; and, when the cause of action does not arise under a law of the United States, depends upon the law of the State in which the suit is brought. *Martin* v. *Baltimore & Ohio Railroad Co.*, 673.
2. By the law of West Virginia, an action for a personal injury abates by the death of the person injured. *Ib.*
3. If, after verdict and judgment for the defendant in the Circuit Court of the United States in an action the cause of which does not survive by law, and pending a writ of error in this court upon the plaintiff's exceptions to the rulings and instructions at the trial, the plaintiff dies, the action abates and the writ of error must be dismissed. *Ib.*

See CONTRACT, 3;
REMOVAL OF CAUSES, 1.

ALIEN.

See JURISDICTION, D, 4.

APPEAL.

If land is conveyed to a trustee, to hold for the benefit of a married woman for life, and then to convey to an infant in fee; and upon a bill in equity by the tenant for life against the remainderman and the trustee, and after the appointment of a guardian *ad litem* for the remainderman, part of the land is sold for the payment of repairs and taxes, and partition is decreed of the rest in equal moieties in fee between the tenant for life and the remainderman, and part of the land set off to the tenant for life is sold by her; and, by decree upon a bill by the remainderman, after coming of age, against the heirs of the trustee

and of the tenant for life and the purchasers, the proceedings in and under the partition suit are set aside, and a new trustee appointed to convey the whole land to the remainderman; the heirs of the original trustee cannot appeal from this decree without joining the other defendants, on a summons and severance, or some equivalent proceeding, recorded in the court rendering the decree. *Inglehart* v. *Stansbury*, 68.

ATTORNEY AT LAW.

1. The attorneys of record on both sides, in a suit in equity to enforce a lien on real estate in which a decree for sale had been entered and an appeal taken without a supersedeas, made and signed a written agreement that the property might be sold under the decree pending the appeal, and that the money might be paid into court in place of the property, to abide the decision on the appeal. The property was sold under the decree, and the money was paid into court. *Held*, that the agreement was one which the attorneys had power to make in the exercise of their general authority, and as incidental to the management of the interests entrusted to them, and that the principals should not be permitted to disregard it to the injury of one who purchased, in good faith, at a judicial sale. *Halliday* v. *Stuart*, 229.

BALTIMORE AND OHIO RAILROAD COMPANY.

See CORPORATION, 7.

BANKRUPT.

Assignees in bankruptcy, although not in possession of the bankrupt's property, are nevertheless required to look out for the interests of all, and are entitled to compensation, the lack of possession being important only in determining the amount of the compensation. *Meddaugh* v. *Wilson*, 333.

See TRUST, 2.

CASES AFFIRMED OR FOLLOWED.

1. *United States* v. *Alger*, 151 U. S. 362, followed. *United States* v. *Stahl* 366.
2. The principles which, in *Pennsylvania College Cases*, 13 Wall. 190, sustained the validity of the legislation in question there, lead here to the affirmance of the decree below. *Bryan* v. *Board of Education &c.*, 639.

See CRIMINAL LAW, 8, 13;
JURISDICTION, B, 10, 11; D, 6.

CASES DISTINGUISHED.

See JURISDICTION, D, 5.

CIRCUIT COURT COMMISSIONER.

8283 complaints being made to a commissioner of a Circuit Court, charging that number of persons with violating the provisions of Rev. Stat. § 5512, by fraudulently obtaining registration in Louisiana, that number of warrants were issued and delivered to the marshal. 6903 of the persons against whom the warrants issued were not found. 1380 were arrested, 77 of whom were held for trial, and the remaining 1303 on examination were discharged. The commissioner presented his account to the court, claiming in each of the 8283 cases the fee of $10, allowed by Rev. Stat. § 1986 for "his services in each case, inclusive of all services incident to the arrest and examination." The Circuit Court approved and allowed the claim only as to the 77 cases, and that was paid. The commissioner brought suit in the Court of Claims to recover a fee of $10, in each of the other 8206 cases. The government demurred to the petition, and it was dismissed. The claimant appealed from this judgment. *Held*, (1) That the refusal of the Circuit Court to approve the account of the commissioner, though no bar to the recovery, might be a matter for consideration in respect to the good faith of the transaction; (2) That the payment of the claim for the 77 cases conceded the sufficiency of the complaint on which, in each case, the proceeding was founded; (3) That when a defendant was arrested and an examination held, there was a criminal case entitling the commissioner to a fee, although the examination resulted in a discharge; (4) That when no arrest was made, and no examination took place, no case had arisen within the meaning of Rev. Stat. § 1986, entitling the commissioner to a fee. *Southworth* v. *United States*, 179.

CIVIL LAW.

See LOCAL LAW, 4, 5.

CLAIMS AGAINST THE UNITED STATES.

A naval officer, travelling under orders from San Francisco to New York by way of the Isthmus of Panama, is to be considered, under the statutes applicable to the case, as travelling under orders in the United States, and as entitled to eight cents per mile, measured by the nearest travelled route. *United States* v. *Hutchins*, 542.

See LIMITATION, STATUTES OF, 2;
RECEIPT.

COMMON CARRIER.

See NEGLIGENCE.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. The provision in the law of October 16, 1889, of the State of Georgia, (Laws of Georgia, 1889, No. 399, p. 29,) distributing for taxation pur-

poses the rolling stock and other unlocated personal property of a railway company, to and for the benefit of the counties traversed by the railroad, does not violate the provision in the Fourteenth Amendment to the Constitution, that no State shall deny to any person within its jurisdiction the equal protection of its laws. *Columbus Southern Railway Co.* v. *Wright*, 470.

2. This court must, when its jurisdiction is invoked to review a decision of the highest court of a State, determine for itself whether the suit involves such a Federal question as can be reviewed here under Rev. Stat. § 709. *Newport Light Company* v. *Newport*, 527.
3. A gas company contracted with a municipal corporation in a State, to furnish gas in the streets of the municipality, to the exclusion of all others. Before the expiration of the term, the municipal corporation made a similar contract with another company. The first company, by means of a suit in equity against the municipality, begun in the court below and carried by appeal to the highest court of the State, obtained a decree restraining the municipality from carrying the second contract into execution, and enjoining it from contracting with any other person for lighting the streets with gas during the lifetime of the first contract. The municipality then, the first contract being still in full force and unexpired, contracted with an Electric Light Company to light the streets by electricity. Thereupon the first company procured a rule, in the suit in equity, against the municipality and its officers to show cause why they should not be punished for contempt of court for the violation of the decree. On the pleadings to this rule the trial court held that the injunction had been violated, and gave judgment accordingly. On appeal to the highest court of the State, that court reversed the decree below, and directed the lower court to discharge the rule. The case being brought here by writ of error, *Held*, (1) That the decision of the state court of appeal, which construed the original decree granting the injunction, neither raised nor presented any Federal question whatever; (2) That the act of that court in ordering the court below to discharge the rule for contempt was not subject to review here; (3) Whether such an order was the final judgment of the highest court of the State, *quære*. *Ib.*
4. When the highest court of a State, construing one of its own judgments, holds that a party thereto is not guilty of contempt, no Federal question is presented, so far as any decision of this court goes, which confers jurisdiction upon this court to reëxamine or reverse the decision. *Ib.*
5. The act of the legislature of the State of Connecticut relating to railway grade crossings, (Act of June 19, 1889, c. 220, Laws 1889, 134,) being directed to the extinction of grade crossings as a menace to public safety, is a proper exercise of the police power of the State. *New York & New England Railroad Co.* v. *Bristol*, 556.
6. A power reserved by a statute of a State to its legislature, to alter,

amend, or repeal a charter of a railroad corporation, authorizes the legislature to make any alteration or amendment of a charter granted subject to that power, which will not defeat or substantially impair the object of the grant or any rights vested under it. *Ib.*

7. Railroad corporations are subject to such legislative control as may be necessary to protect the public against danger, injustice, or oppression; and this control may be exercised through a board of commissioners. *Ib.*
8. There is no unjust discrimination, and no denial of the equal protection of the laws in regulations regarding railroads which are applicable to all railroads alike. *Ib.*
9. The imposition upon a railroad corporation of the entire expense of a change of grade at a highway crossing does no violation to the Constitution of the United States, if the statute imposing it provides for an ascertainment of the result in a mode suited to the nature of the case. *Ib.*
10. The citizens of Millersburg, Kentucky, raised a fund for the purpose of establishing a collegiate institute in that place or its vicinity, and invited the Kentucky Annual Conference of the Methodist Episcopal Church, South, to take charge of it when established. The invitation was accepted, and the legislature of the State incorporated the institute by an act, one provision in which was a reservation to the legislature of the right to amend or repeal it. Large additions were then made to the fund from other sources, and in 1860 another act was passed, incorporating the Board of Education of that Conference of the Methodist Church. In this act, after reciting the raising of the money, and the establishment of the institution at Millersburg, the control of the college and the disposition of the sums raised were placed in the hands of the Conference. This act, also, was passed subject to the right of the legislature to amend or repeal. In 1861, the legislature passed another act, in which, as construed by the courts, power was conferred upon the Conference to remove the college from Millersburg to any other place within the bounds of the Kentucky Annual Conference. *Held*, that the latter act did not impair any contract created by the former statutes and proceedings. *Bryan* v. *Board of Education &c.*, 639.

B. Of the States.

Connecticut. *See* Constitutional Law, A, 5.
Georgia. *See* Constitutional Law, A, 1.
Kentucky. *See* Constitutional Law, A, 10.
Texas. *See* Corporation, 6.

CONTEMPT.

See Constitutional Law, A, 3, 4.

CONTRACT.

1. When a contract provides that work done under it shall be examined by a superintendent every two weeks, and if done to his satisfaction it shall be a final acceptance by the other party, so far as done, the acceptance by the superintendent forecloses that party from thereafter claiming that the contract had not been performed according to its terms. *Sheffield & Birmingham Coal, Iron & Railway Co.* v. *Gordon*, 285.
2. Time was not of the essence of the contract upon which this action is founded. *Fort Worth City Co.* v. *Smith Bridge Co.*, 294.
3. When one party contracts to set up a machine for another party, and the other party contracts to pay for it, one-third when the machine is steamed up ready to run, and the balance at a future time, with interest, and it is mutually agreed that the buyer shall satisfy himself before payments are due that the machine works to his satisfaction, and if it does not, that the seller shall within 60 days after notice, comply with the terms of his contract or the buyer may declare it paid in full, the proper remedy of the seller, after delivery of the machine and refusal of the buyer to accept it, is an action on the contract to recover the contract price, and not an action for breach of the contract by refusal to accept the machine. *Buckstaff* v. *Russell*, 626.

See ATTORNEY AT LAW; EQUITY, 2; CORPORATION, 5, 6; INSURANCE.

CONTRIBUTORY NEGLIGENCE.

See NEGLIGENCE.

CORPORATION.

1. A sole stockholder in a corporation cannot secure the transfer to himself of all the property of the corporation so as to deprive a creditor of the corporation of the payment of his debt. *Angle* v. *Chicago, St. Paul, Minneapolis & Omaha Railway Co.*, 1.
2. Exemption from being sued out of the district of its domicil is a privilege which a corporation may waive, and which is waived by pleading to the merits. *Central Trust Co.* v. *McGeorge*, 129.
3. The fact that neither the plaintiff nor the defendant reside in the district in which the suit is brought do not prevent the operation of the waiver. *Ib.*
4. When a defendant corporation voluntarily submits itself to the jurisdiction of a Circuit Court of the United States, its action cannot be overruled at the instance of stockholders and creditors, not parties to the suit so brought, but who were permitted to become parties by an intervening petition. *Ib.*
5. A corporation created for the purpose of dealing in lands, and to which

the powers to purchase, to subdivide, to sell, and to make any contract essential to the transaction of its business are expressly granted, possesses, as fairly incidental, the power to incur liability in respect of securing better facilities for transit to and from the lots or lands which it is its business to acquire and dispose of. *Fort Worth City Co.* v. *Smith Bridge Co.*, 294.

6. It being within the power of such a corporation to enter into such a contract, the provisions of the constitution of Texas, touching the issue of bonds by corporations formed under its laws, will not prevent its becoming liable to perform its agreements therein, after receiving benefits under it at the expense of the other contracting party. *Ib.*
7. The Baltimore and Ohio Railroad Company is a corporation of the State of Maryland only, though licensed by the State of West Virginia to act within its territory, and liable to be sued in its courts; and may therefore remove into the Circuit Court of the United States for the District of West Virginia an action brought against it in a court of the State of West Virginia by a citizen thereof. *Martin* v. *Baltimore & Ohio Railroad Co.*, 673.

See JURISDICTION, D, 2;
REMOVAL OF CAUSES, 2.

COURT AND JURY.

1. The evidence in this case was conflicting and would not have warranted the court in directing a verdict for the defendant. *Lincoln* v. *Power*, 436.
2. The question whether the plaintiff was walking upon one part of the sidewalk rather than another was properly left to the jury. *Ib.*
3. In this action it would have been error to instruct the jury that "where a dangerous hole is left in a sidewalk in a public street of a city, over which there is a large amount of travel, the author will be liable for an injury resulting from the act, although other causes subsequently arising may contribute to the injury." *Ib.*
4. An assignment of error cannot be sustained because the judge expresses himself as impressed in favor of the one party or the other, if the law is correctly laid down, and if the jury are left free to consider the evidence for themselves. *Ib.*
5. Judges of Federal courts are not controlled in their manner of charging juries by state regulations, such part of their judicial action not being within the meaning of section 914 of the Revised Statutes. *Ib.*

See NEGLIGENCE, (4.)

COURT OF CLAIMS.

See LIMITATION, STATUTES OF;
RECEIPT.

CRIMINAL LAW.

1. An affidavit, under section 878 of the Revised Statutes, by a person indicted, setting forth that certain testimony is material to his defence and that he is without means to pay the witnesses, and praying that they may be summoned and paid by the United States, is not a "pleading of a party," nor "discovery or evidence obtained from a party or witness by means of a judicial proceeding," which cannot, by section 860, be given in evidence against him in a criminal proceeding. *Tucker* v. *United States*, 164.
2. On a trial for murder of a woman by shooting, the jury were instructed that if the defendant, at the time of the killing, although not insane, was in such a condition, by reason of drunkenness, as to be incapable of forming a specific intent to kill, or to do the act that he did do, the grade of his crime would be reduced to manslaughter. *Held*, that he had no ground of exception to a refusal to instruct that if at the time of the killing he was so drunk as to render the formation of any specific intent to take her life impossible on his part, and before being drunk he entertained no malice towards her and no intention to take her life, he could not be convicted of murder. *Ib.*
3. In Utah it is not necessary that an indictment for murder should charge that the killing was unlawful. *Davis* v. *Utah*, 262.
4. An indictment which clearly and distinctly alleges facts showing a murder by the unlawful killing of a human being with malice aforethought is good as an indictment for murder under the Utah statutes, although it may not indicate upon its face, in terms, the degree of that crime, and, thereby, the nature of the punishment which may be inflicted. *Ib.*
5. The indictment in this case sufficiently charged the crime of murder. *Ib.*
6. After the verdict of the jury that the defendant was guilty of murder in the first degree, the court, the defendant being present, announced that he had been convicted of murder in the first degree without any recommendation, and, as he elected to be shot, therefore it was ordered, adjudged, and decreed that he be taken, etc., and shot until he was dead. *Held*, that this was a full compliance with the requirements of the statutes of Utah. *Ib.*
7. Whether or not a particular homicide is committed in repulsion of an attack, and, if so, justifiably, are questions of fact, not necessarily dependent upon the duration or quality of the reflection by which the act may have been preceded. *Hickory* v. *United States*, 303.
8. *Allen* v. *United States*, 150 U. S. 151, followed in condemning the doctrine as impracticable, which tests the question whether a person on trial for murder is entitled to excuse on the ground of self-defence, or exceeded the limits of the exercise of that right, or acted upon unreasonable grounds, or in the heat of passion, by the deliberation with which a judge expounds the law to a jury, or the jury determines the

facts, or with which judgment is entered and carried into execution. *Ib.*

9. The provision in Rev. Stat. § 1024, that "when there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offences, which may be properly joined, instead of having several indictments, the whole may be joined in one indictment, in separate counts, and if two or more indictments are joined in such cases, the court may order them to be consolidated," leaves the court to determine whether, in a given case, a joinder of two or more offences in one indictment is consistent with settled principles of criminal law, and also free to compel the prosecution to elect under which count it will proceed, when it appears from the indictment or from the evidence, that the prisoner may be embarrassed in his defence, if that course be not pursued. *Pointer* v. *United States*, 396.
10. When an indictment contains two counts charging the commission of two murders, committed on the same day, in the same county and district, and with the same kind of instrument, the court is justified in forbearing at the beginning of the trial, and before the disclosure of the facts, to compel an election by the prosecutor between the two charges. *Ib.*
11. When, in the case of such joinder, it is developed in the course of the trial that the accused was not confounded in his defence by the union of the two offences in the same indictment, and that his substantial rights will not be prejudiced by the refusal of the court to compel the prosecutor to elect upon which of the two he will proceed, the court is justified in such refusal. *Ib.*
12. All the panel of jurors were examined as to their qualifications, and thirty-seven were found not liable to objection for cause. The defendant was in court during this examination, was face to face with the jurors so examined, and had an opportunity to participate in the examination to such extent as was necessary for him to ascertain whether any of them were liable to objection for cause, and was at liberty to strike from the list of those thus found to be qualified the names of the persons, not exceeding twenty, whom he did not wish to serve on the jury. *Held*, that, the prisoner having been thus brought face to face with the jury during these proceedings, the proceedings were regular. *Ib.*
13. *Lewis* v. *United States*, 146 U. S. 376, adhered to and distinguished from this case. *Ib.*
14. The mode of designating and empanelling jurors for the trial of cases in the courts of the United States is within the control of those courts, subject only to the restrictions prescribed by Congress, and to such limitations as are recognized by settled principles of criminal law to be essential in securing impartial juries for the trial of offences. *Ib.*

15. A prisoner on trial in a Federal court under indictment for murder is not entitled as of right to have the government make its peremptory challenges before he makes his, although it is within the discretion of the court to direct it; and when the laws of the State in which the trial takes place prescribe such a course, the court may pursue that method or not as it pleases. *Ib.*
16. It is not indispensable to conviction for murder that the particular motive for taking the life of a human being shall be established by proof to the satisfaction of the jury. *Ib.*
17. When the record in a criminal case shows fully the crime for which the prisoner was indicted and all the proceedings thereon, through trial and verdict up to conviction and sentence, the failure in the sentence to name the crime for which the prisoner is sentenced may be supplied by reference to the rest of the record. *Ib.*
18. Whether a court of the United States, in the absence of authority conferred by statute, has the power, after passing sentence in a criminal case, to suspend its execution indefinitely, and until the court in its discretion removes such suspension; *Quære.* *Ib.*

See HABEAS CORPUS.

CUSTOMS DUTIES.

1. If words used in a statute imposing duties on imports had at the time of its passage a well-known signification in our trade and commerce, different from their ordinary meaning among the people, the commercial meaning must prevail, unless Congress has clearly manifested a contrary intention; and it is only when no commercial meaning is called for or proved, that the common meaning is to be adopted. *Cadwalader* v. *Zeh*, 171.
2. The question whether small earthenware cups, saucers, mugs, and plates, having on them letters of the alphabet and figures of animals or the like, are "toys," within the meaning of Schedule N, and not "earthenware," within Schedule B, of the act of March 3, 1883, c. 121, depends upon the commercial meaning of the word "toys," if that differs from the ordinary meaning. *Ib.*
3. Woven cotton cloth, the groundwork of which was uniform, and upon which were figures or patterns, woven into it by means of a Jacquard attachment contemporaneously with the weaving of the fabric, and which was known as Madras mull, being imported into the United States in 1886, became subject to the specific duties imposed by Schedule I (paragraphs 319, 320, 321 in the customs enumeration) of the tariff act of March 3, 1883, c. 121, 22 Stat. 488, estimated by the number of threads to the square inch, and not to the *ad valorem* duty imposed by the same schedule on manufactures of cotton not specially enumerated. *Hedden* v. *Robertson*, 520.

DAMAGES.

Judgment affirmed with additional damages under Rev. Stat. § 1010 and Rule 23 of this court. *Texas & Pacific Railway* v. *Volk*, 73.

See EXCEPTION, 1;
PATENT FOR INVENTION, 3, 4, 5.

EJECTMENT.

1. Certain loose parol statements and certain hearsay evidence is held to be inadmissible in this action of ejectment, either to fix the boundaries of the defendant's deed, or to show the character and extent of his alleged adverse possession. *Maxwell Land Grant Co.* v. *Dawson*, 586.
2. When the defendant in an action of ejectment sets up title under adverse possession, it is competent for him to show that it was generally known in the neighborhood that he was in possession of the disputed premises, and was generally regarded as their owner. *Ib.*
3. When the description in the deed through which a plaintiff in ejectment claims covers a large estate, as a whole, excepting from the grant such tracts, "parts of said estate," warranted not to exceed a stated number of acres, "which the parties of the first part have heretofore sold and conveyed," the burden of proof is on the plaintiff to show that the land in suit does not come within the exception. *Ib.*

See JURISDICTION, D, 1.

EQUITY.

1. The United States granted lands to the State of Wisconsin, to aid in the construction of railroads. The State granted a portion of these lands to a company, called in the opinion of the court The Omaha Company, for the purpose of constructing a defined railroad. It also granted another portion of these to another company, called in the opinion of the court the Portage Company, for the purpose of constructing another and different, and to some extent competing railroad. The latter grant was conditioned upon the completion of the road by the grantee within a specified period. Work was begun upon the Portage road, but in 1873 the company became embarrassed, and then broke down. In 1878 the legislature of Wisconsin extended the time for the construction of the Portage Company's road three years. In 1881 a contract was made with A. for its completion, under which work was resumed with vigor and was diligently prosecuted, with every prospect that the road would be completed within the extended time. In 1882, before the expiration of that extension, the legislature of that State passed an act revoking the grant to the Portage Company, and bestowing it upon the Omaha Company. As a result of this the work which A. was diligently performing under his contract was arrested; he was prevented through the direct and active efforts

of the Omaha Company from completing his performance of it; the profits which he would have received from it were lost to him; and the land grant was wrested from the Portage Company. A. then commenced an action at law against the Portage Company, in which a judgment was recovered by his administratrix. Execution thereon being returned *nulla bona*, a bill in equity was filed in the Circuit Court of the United States by the administratrix against the Omaha Company, to reach the land grant in its hands. The bill charged that the Omaha Company had conspired with and bribed certain officials of the Portage Company, who, through circumstances named in the bill, had become sole stockholders in that company, to wrest the land grant from the Portage Company, and to prevent A. from completing his contract. It set forth sundry steps in the alleged conspiracy, and charged that the legislature of Wisconsin had been induced by the conspirators to pass the act forfeiting the land grant and bestowing it upon the Omaha Company. The defendant demurred and the demurrer was sustained by the Circuit Court. *Held*, (1) That the demurrer admitted that A. had suffered the wrongs complained of in consequence of the interference of the Omaha Company; (2) That it must be assumed as conceded by the demurrer that the officials of the Portage Company had been bribed by the Omaha Company to betray their trust, and that the legislature had been induced by false allegations to revoke the grant to the Portage Company and to bestow it upon the Omaha Company; (3) That as the breaking down of the Portage Company and the ruin of its contractor was the natural and direct result of all this, the contractor could resort to equity to enforce against the land grant in the hands of the Omaha Company the judgment which he had obtained at law against the Portage Company; (4) That it must be presumed that the legislature, in transferring the grant to the Omaha Company, did not intend to affect thereby the rights of the Portage Company against the Omaha Company in the courts; (5) That as there was nothing in the words of the grant to the Omaha Company which expressly tied up the granted land, it passed to that company subject to seizure and sale in satisfaction of any of its obligations; (6) That the Omaha Company, by reason of its conduct in this matter, became, as to the creditors of the Portage Company, a trustee *ex maleficio* in respect of this property. *Angle* v. *Chicago, St. Paul, Minneapolis & Omaha Railway Co.*, 1.

2. A. commenced an action against B. in Utah, to recover possession of a tract of mining land. C., desiring to purchase the disputed tract, agreed with B. to purchase it, a part of the purchase money to be paid at the signing of the agreement (which was done), and the balance to be paid on delivery of the deed, after determination of the action in favor of B., C. to go into possession at once, but not to remove any ores until delivery of the deed. A., on his part, then sold the disputed premises to C. By a subsequent agreement C. agreed to pay the con-

sideration therefor to A. in a year, if the suit should be determined in favor of A. in that time, and if not then determined, to pay the purchase money into court in the action of A. against B. By the same agreement the property was mortgaged by C. to A. to secure its performance. The money not having been paid into court under the last agreement, A. brought a suit to foreclose the mortgage, in which it was alleged that the action by A. against B. was still pending and undetermined, and that C. had not paid the amount into court, and by which was prayed a decree for such payment and for foreclosure and sale. The defendant demurred, and, the demurrer being overruled, answered, setting up an alleged fraudulent conspiracy, whereby the most valuable parts of the lands agreed to be conveyed by A. to C. had been omitted from the deeds. The answer also set up that C. had commenced a suit against A. to compel a reformation of the deed, in which a decree for reformation had been made below, and that the suit was pending in this court on appeal. Issue being taken on this answer, it was decreed that A. was entitled to have the amount of the mortgage debt, with interest, paid into court in the suit between A. and B., and for a decree of foreclosure. This decree, on appeal to the Supreme Court of the Territory, was modified by allowing thirty days for the payment of the money before advertising the property for sale, and by providing that the money should be paid into court in the foreclosure suit, instead of in the action of A. against B., until an order could be obtained in that case for the deposit of the money. *Held*, that in all this there was no error. *Crescent Mining Co.* v. *Wasatch Mining Co.*, 317.

See MASTER IN CHANCERY.

EVIDENCE.

1. A Cherokee Indian being indicted in the Circuit Court of the United States for the Western District of Arkansas for the murder of a white man, it was set up in defence that the murdered man was also an Indian, and that the court was therefore without jurisdiction. The evidence for the defence showed that the murdered man was generally recognized as an Indian, that his reputed father was so recognized, and that he himself was enrolled, and had participated in the payment of bread money to the Cherokees. To offset this, the government showed that he had not been permitted to vote at a Cherokee election, but it also appeared that he had not been in the district long enough to vote. *Held*, (1) That the burden was on the prosecution to prove that he was a white man; (2) That the testimony offered by the government had no legitimate tendency to prove that the murdered man was not an Indian. *Famous Smith* v. *United States*, 50.
2. In an action against a railroad company by one of several workmen employed by another corporation in unloading a railroad car, for personal injuries sustained by being thrown off the car by the running of an

engine and other cars against it, testimony of another of the workmen that they were busy at their work, and did not think of the approach of the engine until it struck the car, is competent evidence for the plaintiff upon the issue of contributory negligence on his part. *Texas & Pacific Railway Co.* v. *Volk*, 73.

3. In an action for personal injuries, brought against a railroad company by a workman in the employ of another corporation, testimony that after his injuries his employer "just kept him on, seeing he got hurt, so he could make a living for his wife and family," is competent evidence upon the question how far his capacity of earning a livelihood was impaired by his injuries. *Ib.*
4. This court is not committed to the general doctrine that written memoranda of subjects and events, pertinent to the issues in a case, made cotemporaneously with their taking place, and supported by the oath of the person making them, are admissible in evidence for any other purpose than to refresh the memory of that person as a witness. *Bates* v. *Preble*, 149.
5. When it does not appear that such a memorandum was made cotemporaneously with the happening of the events which it describes, it should not be submitted to the jury. *Ib.*
6. If such a memorandum, made in a book containing other matter relating to the issues which is not proper for submission to the jury, be admitted in evidence, the leaves containing the inadmissible matter should not go before the jury. *Ib.*
7. In such case it is not enough to direct the jury to take no notice of the objectionable matter, but the leaves containing it should be sealed up and protected from inspection by the jury before the book goes into the conference room. *Ib.*
8. The genuineness of disputed handwriting cannot, as a general rule, be determined by comparing it with other handwriting of the party. *Hickory* v. *United States*, 303.
9. A writing specially prepared for purpose of comparison is not admissible. *Ib.*
10. If a paper, admitted to be in the handwriting of the party or to have been subscribed by him, is in evidence for some other purpose in the cause, the paper in question may be compared with it by the jury; but if offered for the sole purpose of comparison, it is not admissible. *Ib.*
11. The right of a person indicted for a capital offence to have delivered to him, under Rev. Stat. § 1033, at least two days before the trial, a list of the witnesses to be produced, may be waived by sitting by and listening to the testimony in chief of a witness not on such list, before inquiring whether his name had been furnished to defendant. *Ib.*
12. Proof of contradictory statements by one's own witness, voluntarily called and not a party, is in general not admissible, although the party calling him may have been surprised by them; but he may show

that the facts were not as stated, although this may tend incidentally to discredit the witness. *Ib.*

13. It is not reversible error to permit a plaintiff, suing a municipality to recover for injuries received by reason of defects in its streets, to prove a bill or statement of the claim which had been served on the city council before commencement of the action. *Lincoln* v. *Power*, 436.
14. The plaintiff in such an action may put in evidence sections of the municipal code. *Ib.*
15. The requirement that an assignment of error, based upon the admission or rejection of evidence, must, in the case of a deposition, excluded in whole or in part, state the full substance of the evidence so admitted or rejected, does not apply where the witness testifies in person, and where the question propounded to him is not only proper in form, but is so framed as to clearly admit of an answer favorable to the claim or demand of the party producing him. *Ib.*
16. When the court, in such a case, does not require the party, in whose behalf the question is put, to state the facts proposed to be proved by the answer, the rejection of the answer will be deemed error or not, according as the question, upon its face, if proper in form, may or may not clearly admit of an answer favorable to the party in whose behalf it is propounded. *Ib.*
17. When objection is made to a question to a witness as incompetent, irrelevant, and immaterial, and the objection is sustained, the court may or may not, within its discretion, require the party, in whose behalf the question is put, to state the facts proposed to be proved by the answer. *Ib.*

See EJECTMENT, 1, 2, 3; FRAUDULENT CONVEYANCE, 3, 7; PATENT FOR INVENTION, 3; STATUTE, C; VERDICT, 2.

EXCEPTION.

1. In an action for personal injuries, exceptions to rulings upon exemplary damages become immaterial if the court afterwards withdraws the claim for such damages from the consideration of the jury, and a verdict is returned for "actual damages" only. *Texas & Pacific Railway Co.* v. *Volk*, 73.
2. The omission of the court to instruct the jury upon a point of law arising in the case is not the subject of a bill of exceptions, unless an instruction upon the point was requested by the excepting party. *Ib.*
3. Matter excepted to should be brought to the attention of the court before the retirement of the jury. *Hickory* v. *United States*, 303.
4. When several distinct propositions are given, and the exception covers all of them, it cannot be sustained if any one of them is correct. *Ib.*

See JURISDICTION, B, 6; MASTER IN CHANCERY, 1, 4.

EXECUTION.

See LOCAL LAW, 2.

FEES.

See CIRCUIT COURT COMMISSIONER.

FRAUD.

See EQUITY, 1.

FRAUDULENT CONVEYANCE.

1. The proofs fail to establish that the transactions complained of by the appellant were fraudulent, as alleged. *Gottlieb* v. *Thatcher*, 271.
2. The relationship of brothers does not of and in itself cast suspicion upon a transfer of property by one to the other, or create such a *prima facie* presumption against its validity as would require the court to hold it to be invalid without proof that there was fraud on the part of the grantor, participated in by the grantee. *Ib.*
3. In an action brought in South Dakota by the assignee of the stock of goods of an insolvent trader (who had taken the stock in satisfaction of an alleged debt due him from the insolvent) against a sheriff who had seized them on a writ of attachment at the suit of a creditor of the insolvent, the defence being set up that the transfer to the plaintiff was fraudulent and in violation of the statutes of that State, it is competent for defendant to put in evidence a confidential business statement by the insolvent to a commercial agency, concealing the alleged liability to the plaintiff. *Shauer* v. *Alterton*, 607.
4. The statutes of that State, strictly construed, invalidate any transfer of property, made with the intent, on the part of the owner, to delay or defraud creditors, even when the grantee purchased in good faith; and, when liberally construed, will not permit the grantee, although taking the property in part in satisfaction of his own debt, to enjoy it to the exclusion of other creditors, if the sale was made with intent to delay or defraud other creditors, and if he had, at the time, either actual notice of such intent, or knowledge of circumstances that were sufficient to put a prudent person upon an inquiry that would have disclosed its existence. *Ib.*
5. Such a transfer must be accompanied by an open and visible change of possession, without which it will be void as to creditors. *Ib.*
6. The assignor and the assignee to the transfer being brothers, the court may rightfully instruct the jury that this relation makes it necessary to carefully scrutinize the facts, but that their determination must depend upon whether the transaction was honest and *bona fide*. *Ib.*
7. An assignment of error, based upon the exclusion by the trial court of an answer given in the deposition of a witness to a particular question,

will be disregarded by this court, if the answer or the full substance of it is not set forth in the record in an appropriate form for examination. *Ib.*

HABEAS CORPUS.

1. When a person accused of crime is convicted in a court of the United States and is sentenced by the court, under Rev. Stat. § 5356, to imprisonment for one year and the payment of a fine, the court is without jurisdiction to further adjudge that that imprisonment shall take place in a state penitentiary under Rev. Stat. § 5546; and the prisoner, if sentenced to be confined in a state penitentiary, is entitled to a writ of *habeas corpus* directing his discharge from the custody of the warden of the state penitentiary, but without prejudice to the right of the United States to take any lawful measures to have the petitioner sentenced in accordance with law upon the verdict against him. *In re Bonner*, 242.
2. Where a conviction is correct, and where the error or excess of jurisdiction is the ordering the prisoner to be confined in a penitentiary where the law does not allow the court to send him, there is no good reason why jurisdiction of the prisoner should not be reassumed by the court that imposed the sentence, in order that its defect may be corrected. *Ib.*
3. The court discharging the prisoner in such case on *habeas corpus* should delay his discharge for such reasonable time as may be necessary to have him taken before the court where the judgment was rendered, in order that the defects in the former judgment for want of jurisdiction, which are the subjects of complaint, may be corrected. *Ib.*

HUSBAND AND WIFE.

See MARRIED WOMAN.

INSOLVENT DEBTOR.

See FRAUDULENT CONVEYANCE.

INSURANCE.

A policy of fire insurance containing a provision that it should become void if without notice to the company and its permission endorsed thereon "mechanics are employed in building, altering, or repairing" the insured premises, becomes void by the employment of mechanics in so building, altering, or repairing; and the insurer is not responsible to the assured for damage and injury to the assured premises thereafter by fire, although not happening in consequence of the alterations and repairs. *Imperial Fire Ins. Co.* v. *Coos County*, 452.

INTEREST.

See TRUST, 2, (3).

INTERSTATE COMMERCE.

A railroad company agreed with a cotton compress company that the latter should receive and compress all the cotton which the railroad might have to transport in compressed condition, and that it should insure the same for the benefit of the railroad company, or of the owners of the cotton, for a certain compensation which the railroad company agreed to pay weekly. It was further agreed that the compress company, on receiving the cotton, was to give receipts therefor, and that the railroad company, on receiving such a receipt, was to issue a bill of lading in exchange for it. Cotton of the value of $700,000, thus deposited with the compress company for compress and transportation, was destroyed by fire. That company had taken out policies of insurance upon it, but to a less amount, in all of which the compress company was named as the assured, but in the body of each policy it was stated that it was issued for the benefit of the railroad company or of the owners. The various owners of the cotton further insured their respective interests in other insurance companies, called in the litigation the marine insurance companies. After the fire the amounts of the several losses were paid to the assured by the several marine companies. In an action in the courts of Tennessee to settle the rights of the parties, the Supreme Court of that State held, (89 Tennessee, 1; 90 Tennessee, 306,) that the companies so paying were entitled to be subrogated to the rights of the owners or consignees against the railroad company under its bills of lading, and that the railroad company was entitled to have the insurance which had been taken out by the compress company collected for its benefit. The railroad company not being party to those suits, the marine insurance companies filed their bill in equity in a state court in Tennessee against the compress company, the several persons who had insured the destroyed cotton for it, and the railroad company, to reach and subject the fire insurance taken out by the compress company for the benefit of the railroad company, and for other relief set forth in the bill. The plaintiffs in the suit were, a corporation under the laws of Pennsylvania, a corporation under the laws of New York, and a corporation under the laws of Rhode Island, on behalf of themselves and of all other companies standing in like position. On the other side were two corporations under the laws of Pennsylvania, two corporations under the laws of Great Britain, a corporation under the laws of New York, certain residents of Rhode Island, certain citizens of New York, certain citizens of Tennessee, two aliens, and forty-four insurance companies of West Virginia, Pennsylvania, New York, Illinois, Louisiana, Wisconsin, Alabama, Connecticut, Ohio, Texas, Indiana, and Great Britain. The defendants petitioned for the removal of the cause to the Circuit Court of the United States, on the ground that the controversy was wholly between citizens of different States, or between citizens of one or more of the several States and foreign

citizens and subjects, and that the same could be fully determined as between them. The petition was denied and the cause proceeded to judgment in the state court. In the course of the trial it was attempted to be proved that special rates, rebates or drawbacks had been given in violation of the interstate commerce laws and regulations. A decree being entered for the plaintiffs, giving relief substantially as prayed for in the bill, the Supreme Court of the State, on appeal, affirmed the judgment below, and held that the law making agreements for rebates, etc., void, did not invalidate the contracts of affreightment. A writ of error being sued out to this court, it is now *held*, (1) That whether the cause be looked at as a whole, or whether it be considered under any adjustment or arrangement of the parties on opposite sides of the matter in dispute, there was no right of removal, on the part of the several plaintiffs in error, or either of them; (2) That there is nothing in the interstate commerce law which vitiates bills of lading, or which, by reason of an allowance of rebates, if actually made, would invalidate a contract of affreightment, or exempt a railroad company from liability on its bills of lading. *Merchants' Cotton Press Co.* v. *Ins. Co. of North America*, 368.

JUDGMENT.

A verdict being returned for plaintiff for $11,000, on suggestion of the court a remittitur of $6001 was entered. As recorded, the terms of the judgment were: "It is, therefore, ordered and adjudged by the court that the plaintiff, Henry Horn, do have and recover of the defendant, the Texas and Pacific Railway Company, the sum of eleven thousand dollars and all costs in this behalf expended. And it appearing to the court that on this day the plaintiff filed, in writing, a remitter of $6000.00: It is, therefore, ordered and adjudged by the court that execution issue for the sum of $4999.00 only, and all costs herein." The order of allowance of the writ of error declared that the judgment was rendered for $4999, and the bond and citation so described it. *Held*, that, upon the entire record, the judgment must be held to be for no larger sum than $4999. *Texas & Pacific Railway Co.* v. *Horn*, 110.

See LOCAL LAW, 1.

JURISDICTION.

A. GENERALLY.

When an act of the legislature is challenged in a court, the inquiry by the court is limited to the question of power, and does not extend to the matter of expediency, to the motives of the legislators, or to the reasons which were spread before them to induce the passage of the act; and, on the other hand, as the courts will not interfere with the action of the legislature, so it may be presumed that the legislature never

intends to interfere with the action of the courts, or to assume judicial functions to itself. *Angle* v. *Chicago, St. Paul, Minneapolis & Omaha Railway Co.*, 1.

See HABEAS CORPUS, 2, 3.

B. OF THE SUPREME COURT OF THE UNITED STATES.

1. This court has jurisdiction to review decrees or judgments of the Supreme Courts of the Territories except in cases which may be taken to the Circuit Courts of Appeals, or where the matter in dispute, exclusive of costs, does not exceed the sum of five thousand dollars. *Aztec Mining Co.* v. *Ripley*, 79.
2. Congress intended to confer upon this court jurisdiction to pass upon the jurisdiction of the Circuit Courts of Appeals in cases involving the question of the finality of its judgment under section six of the act of March 3, 1891, 26 Stat. 826, c. 517. *Ib.*
3. This writ of error is dismissed because the judgment does not exceed the sum of $5000, exclusive of costs, and the jurisdiction of the court below was not involved within the meaning of the act of February 25, 1889, 25 Stat. 693, c. 236, empowering this court to review the judgments of Circuit Courts when such is the fact. *Texas & Pacific Railway Co.* v. *Saunders*, 105.
4. A final decree was entered January 7, 1891, and appeal allowed the same day. A motion for rehearing was made January 10, 1891, which was argued February 3, 1892, and denied February 17, 1892. An appeal bond was given April 15, 1892, conditioned for the prosecution of the appeal taken January 7, 1891, and the record was filed here April 19, 1892. *Held*, that, under the provisions of the act of March 3, 1891, 26 Stat. 826, c. 517, the Circuit Court of Appeals had jurisdiction of this appeal, and, upon the denial of the petition for a rehearing, a new appeal should have been taken to that court for the Eighth Circuit. *Voorhees* v. *John T. Noye Manufacturing Co.*, 135.
5. A public act of the State of Maryland providing for the condemnation of land for the use of a railroad company, was held by the Court of Appeals of that State to require notice to the owner of the land proposed to be condemned, when properly construed. *Held*, that this court had no jurisdiction over a writ of error to a court of that State, when the only error alleged was the want of such notice, which, it was charged, invalidated the proceedings as repugnant to the Constitution of the United States. *Baltimore Traction Co.* v. *Baltimore Belt Railroad Co.*, 137.
6. Rulings objected to at the trial, but not stated in the bill of exceptions to have been excepted to, are not subject to review on error. *Tucker* v. *United States*, 164.
7. At October term, 1892, an order was made appointing commissioners "to locate and mark the state line between the States of Iowa and

Illinois, pursuant to the opinion of this court in this cause," reported in 147 U. S. 1. At the same term the commissioners filed a report of their doings, which was ordered to be confirmed, and it was further ordered "that said commissioners proceed to determine and mark the boundary line between said States throughout its extent, and report thereon to this court, with all convenient speed." At the present term the State of Illinois moved to set aside the order of confirmation. The State of Iowa resisted on the ground, among others, that the decree of confirmation was a final decree, which could not be set aside at a term subsequent to that at which it was entered. *Held*, that the confirmation of the report was not a final decree deciding and disposing of the whole merits of the cause, and discharging the parties from further attendance; that the court could not dispose of the case by piecemeal; and that until the boundary line throughout its extent is determined, all orders in the case will be interlocutory. *Iowa* v. *Illinois*, 238.

8. In the exercise of original jurisdiction in the determination of the boundary line between sovereign States, this court proceeds only upon the utmost circumspection and deliberation, and no order can stand in respect of which full opportunity to be heard has not been afforded. *Ib.*

9. Under the Judiciary Act of March 3, 1891, c. 517, 26 Stat. 826, 827, when an appeal or writ of error is taken from a District Court or a Circuit Court in which the jurisdiction of the court alone is in issue, a certificate from the court below of the question of jurisdiction to be decided is an absolute prerequisite for the exercise of jurisdiction here; and, if it be wanting, this court cannot take jurisdiction. *Maynard* v. *Hecht*, 324.

10. Following *Maynard* v. *Hecht*, *ante*, 324, this case is dismissed for want of jurisdiction. *Moran* v. *Hagerman*, 329.

11. This case is dismissed on the authority of *Meagher* v. *Minnesota Thresher Mfg. Co.*, 145 U. S. 608, (and other cases named in the opinion,) in which it was held that a judgment of the highest court of a State, overruling a demurrer, and remanding the case to the trial court for further proceedings, is not a final judgment. *Werner* v. *Charleston*, 360.

12. Two parties claiming title to the same land in California, each under a Mexican grant made prior to the treaty of Guadalupe Hidalgo, and each under a patent from the United States, one of them filed a bill in equity against the other in a District Court in San Francisco to quiet title. The cause was transferred to the Superior Court for that city and county, and being heard there, it was decreed that the defendant's title was procured by fraud, and the relief sought for was granted. On appeal to the Supreme Court of the State the judgment was affirmed, the court saying that the question of the genuineness of each original grant was a legitimate subject of inquiry, when the issue

was made by the pleadings, and that on the evidence in the case the finding against the genuineness of the defendant's grant would not be disturbed on appeal. *Held*, that this ruling presented no Federal question for the consideration of this court. *California Powder Works* v. *Davis*, 389.

13. What is necessary to give this court jurisdiction on writ of error to the highest court of a State again stated. *Ib.*
14. This court does not deem it necessary to examine the question raised under the practice in California, allowing separate appeals to lie from a judgment and from an order granting or refusing a new trial. *Ib.*
15. This court cannot take notice of an assignment of error that the damages found by the jury were excessive and given under the influence of passion and prejudice. An error in that respect is to be redressed by a motion for a new trial. *Lincoln* v. *Power*, 436.
16. Under the statutes of the Territory of Utah relating to the distribution of the personal property of a deceased person among those entitled to share in the distribution, the claims of the distributees are several, and not joint; and when the claims of each are less than the amount necessary to give this court jurisdiction, two or more cannot be joined, in order to raise the sum in dispute to the jurisdictional amount. *Chapman* v. *Handley*, 443.
17. When the Supreme Court of a Territory, in a suit in the nature of an equity suit, determines that the findings of the trial court were justified by the evidence, this court is limited to the inquiry whether the decree can be sustained on those findings, and cannot enter into a consideration of the evidence. *Mammoth Mining Co.* v. *Salt Lake Foundry and Machine Co.*, 447.
18. The admission of evidence, under exceptions, complained of did not constitute reversible error. *Ib.*
19. This court has jurisdiction over a decision of a state court that a statute of the State, compelling the removal of grade crossings on a railroad is constitutional, and a judgment in accordance therewith enforcing the provisions of the statute. *New York and New England Railroad Co.* v. *Bristol*, 556.
20. Where in an action on a contract a counter-claim to the amount of $10,000 is interposed by the defendant, and judgment is given for plaintiff for less than $5000, this court has jurisdiction to review that judgment when brought here by defendant below. *Buckstaff* v. *Russell*, 626.
21. This court, upon a writ of error to the highest court of a State in an action at law, cannot review its judgment upon a question of fact. *Dower* v. *Richards*, 658.

See APPEAL; JUDGMENT; MASTER IN CHANCERY, 4; PRACTICE; RECEIVER; REMOVAL OF CAUSES.

C. Of Circuit Courts of Appeal.

The Circuit Court of Appeals for the Eighth Circuit has no jurisdiction in error over a judgment of the Supreme Court of the Territory of New Mexico in a case not in admiralty, nor arising under the criminal, revenue, or patent laws of the United States, nor between aliens and citizens of the United States or between citizens of different States. *Aztec Mining Co.* v. *Ripley*, 79.

D. Jurisdiction of Circuit Courts of the United States.

1. When the jurisdiction of a Circuit Court has fully attached against the tenant in possession in an action of ejectment, the substitution of the landlord as defendant will in no way affect that jurisdiction, although he may be a citizen of the same State with the plaintiff. *Hardenberg* v. *Ray*, 112.
2. A domestic corporation, incorporated under the laws of Texas, a State divided into more than one Federal district is, under the State law and the Federal laws as to the bringing of suits and actions in Federal courts, a citizen and inhabitant of that district in the State within which the general business of the corporation is done, and where it has its headquarters and general offices. *Galveston, Harrisburg and San Antonio Railway Co.* v. *Gonzales*, 496.
3. A railway company, incorporated under the laws of Texas, in which there is more than one Federal district, and having its headquarters and principal offices in one of those districts, is an inhabitant of that district, and cannot be said to be an inhabitant of the other Federal district in the State, although it operates its line of railroad through it, and maintains freight and ticket offices and stations in it. *Ib.*
4. If an alien desires to commence an action or bring a suit against a citizen of the United States, he must resort to the domicil of the defendant in order to bring it. *Ib.*
5. *In re Hohorst*, 150 U. S. 653, distinguished from this case. *Ib.*
6. *Southern Pacific Company* v. *Denton*, 146 U. S. 202, and *Mexican Central Railway* v. *Pinkney*, 149 U. S. 194, followed in holding that a statute of a State which makes an appearance in behalf of a defendant, although in terms limited to the purpose of objecting to the jurisdiction of the court, a waiver of immunity from jurisdiction by reason of nonresidence, is not applicable, under Rev. Stat. § 914, to actions in a Circuit Court of the United States held within the State. *Ib.*
7. Under the act of March 3, 1885, c. 341, 23 Stat. 362, the Federal court in Wisconsin has jurisdiction to try an Indian charged with murdering another Indian within the limits of section 16 in a township in that State which is embraced within and forms part of the La Court Oreilles reservation for the Chippewa Indians. *United States* v. *Thomas*, 577.
8. A Chippewa Indian being indicted in the District Court of the United

States for the Western District of Wisconsin for the murder of another Indian on the Chippewa reservation, it appeared at the trial that the offence took place in township 16, one of the townships set apart for the State as a school reservation. The defendant being found guilty, a motion was made for a new trial. This motion was heard before the District Judge and the Circuit Judge. They differed in opinion on the question of jurisdiction and certified the question here. With it they sent up a transcript of the whole record. *Held*, (1) That it was irregular to send the entire record with a certificate of division in opinion, and that, generally, there could be no such certificate on a motion for a new trial; but that under the circumstances, this court would consider the question certified; (2) That the trial court had jurisdiction, and the motion to set aside the verdict and grant a new trial must be denied. *Ib.*

See CORPORATION, 2, 3, 4;
COURT AND JURY, 5;
CRIMINAL LAW, 18.

E. JURISDICTION OF STATE COURTS.

See RECEIVER.

JURY.

See CRIMINAL LAW, 12, 14, 15.

LEGISLATURE.

See EQUITY, 1;
JURISDICTION, A.

LIEN.

See LOCAL LAW, 1.

LIMITATION, STATUTES OF.

1. In Massachusetts, where an action in tort, grounded on fraud of the defendant, is commenced more than six years after the cause of action arose, and the general statute of limitations applicable to actions sounding in tort is set up, if the fraud is not secret in its nature, and such as cannot readily be ascertained, it is necessary to show some positive act of concealment by the defendant to take the case out of the operation of that statute; and the mere silence of the defendant, or his failure to inform the plaintiff of his cause of action, does not so operate. *Bates* v. *Preble*, 149.
2. A claim against the United States whose prosecution in the Court of Claims was barred by the statute of limitations, was presented to the Treasury for adjustment and payment. The Secretary of the Treasury

transmitted it to the Court of Claims under the provisions of Rev. Stat. § 1063. *Held*, that it was barred by the statute of limitations. *De Arnaud* v. *United States*, 483.

LOCAL LAW.

1. A judgment being filed for record and recorded as required by the statutes of Colorado, a lien attaches at once upon the real estate of the judgment debtor. *Gottlieb* v. *Thatcher*, 271.
2. The proviso in the Colorado statutes concerning liens, suspending the running of the statute when issue of execution is restrained by injunction, applies to a suspension of issue by supersedeas on appeal. *Ib.*
3. The New Mexico statute of limitations as to real actions, Comp. Laws New Mexico, 1884, § 1881, operate when the period of limitation has expired, if set up and maintained, by the defendant in an action of ejectment, to extinguish the right of the plaintiff, and to vest a complete title in the defendant. *Maxwell Land Grant Co.* v. *Dawson*, 586.
4. It is unnecessary to decide whether under the civil law, as in force in New Mexico in 1868, a written instrument was not necessary for the transfer of real estate, (about which *quœre*,) as, if such a provision had previously existed, it had been supplanted at that time by territorial enactments. *Ib.*
5. Under the most liberal construction of the civil law, a transfer of title to real estate could not be effected without identification of the land, delimitation of the boundaries, and delivery of possession, all of which were wanting in this case. *Ib.*

Alabama. *See* MASTER IN CHANCERY, 5.
California. *See* JURISDICTION, B, 14.
Connecticut. *See* CONSTITUTIONAL LAW, A, 5.
Georgia. *See* CONSTITUTIONAL LAW, A, 1.
Kentucky. *See* CONSTITUTIONAL LAW, A, 10.
Massachusetts. *See* LIMITATION, STATUTES OF, 1.
Mississippi. *See* TAX, 2.
New Mexico. *See* LOCAL LAW, 4.
Oregon. *See* WILL.
Rhode Island. *See* MARRIED WOMAN.
South Dakota. *See* FRAUDULENT CONVEYANCE, 3, 4.
Texas. *See* CORPORATION, 6.
Utah. *See* CRIMINAL LAW, 3, 4, 5, 6; JURISDICTION, B, 16.
West Virginia. *See* ACTION, 2.

LONGEVITY PAY.

1. Under the act of March 3, 1883, c. 97, 22 Stat. 473, an officer in the Navy, who resigns one office the day before his appointment to a higher one, is only entitled to longevity pay as of the lowest grade,

having graduated pay, held by him since he originally entered the service. *United States* v. *Alger*, 362.

2. In a suit in the Court of Claims for longevity pay, alleged by the claimant, and denied by the United States, to be due him, "after deducting all just credits and offsets," a sum previously paid him for longevity pay to which he was not entitled may be deducted from the sum found to be due him. *United States* v. *Stahl*, 366.
3. A post chaplain in the Army of the United States, commissioned by the President under the act of March 2, 1867, c. 145, § 7, is entitled, in computing his longevity pay under the act of July 15, 1870, c. 294, § 24, (Rev. Stat. § 1262,) to be credited with his service as a chaplain, employed by the officers composing the council of administration, at a military post approved by the Secretary of War, under the act of July 5, 1838, c. 162, § 18, and the acts supplementary thereto. *United States* v. *La Tourette*, 572.

MARRIED WOMAN.

In Rhode Island a married woman holds the real and personal estate, owned by her at the time of her marriage, to her sole and separate use after marriage, and may permit her husband to manage it without affecting that use; and if the husband, without her knowledge and consent, invests a part of her property in real estate, taking title in his own name, and, on this coming to her knowledge after a lapse of time, she requires it to be conveyed to her, and such conveyance is made after a further lapse of time, the husband being at the time of the conveyance insolvent, her equities in the estate may be regarded as superior to those of the husband's creditors, if it does not further appear that the creditors were induced to regard him as the owner of it, by reason of representations to that effect, either by him or by her. *Garner* v. *Second Nat. Bank of Providence*, 420.

MASTER IN CHANCERY.

1. Exceptions to the report of a master should point out specifically the errors upon which the party relies, not only that the opposite party may be apprised of what he has to meet, but that the master may know in what particular his report is objectionable, and may have an opportunity to correct his errors or reconsider his opinions. *Sheffield & Birmingham Coal, Iron & Railway Co.* v. *Gordon*, 285.
2. The main object of a reference to a master being to lighten the court's labors, the court ought not to be obliged to rehear the whole case on the evidence, when the report is made. *Ib.*
3. If the report of a master is clearly erroneous in any particular, it is within the discretion of the court to correct that error. *Ib.*
4. In the absence of a certificate by a master that the entire evidence

taken by him was sent up with his report, it is impossible to impeach his conclusions upon it. *Ib.*

5. The proceedings in this case were taken within the time required by the statutes of Alabama. *Ib.*

MINERAL LAND.

Under the statutes of the United States, a ledge containing gold-bearing rock, which has formerly been profitably worked for mining purposes, but all work upon which has been abandoned, and which, at the date of a town-site patent of the land within which it lies, is not known to be valuable for mining purposes, is not excepted from the operation of the town-site patent, although, after the town-site patent has taken effect, the land is found to be still valuable for mining purposes. *Dower* v. *Richards*, 658.

MORTGAGE.

See EQUITY, 2.

MUNICIPAL BOND.

See REMOVAL OF CAUSES, 1.

NAVY, OFFICERS OF.

See CLAIMS AGAINST THE UNITED STATES; LONGEVITY PAY.

NEGLIGENCE.

The station of a railway near a large town contained platforms and other accommodations on each side of the tracks, with a double track between them on which many trains were moving both day and night. There was an underground connection between the two by means of a public street, which was in a bad condition. It was a rule of the company that "when a train is standing on a double track for passengers, trains from the opposite direction will come to a stop with the engines opposite to each other." A passenger who was in the habit of travelling on the road and of stopping at this station arrived there in the rear car, in which a notice was posted, that passengers leaving the car by the forward end should turn to the right, and that those leaving by the rear should turn to the left, in each case landing the passenger on the platform, "and thus avoid danger from trains on the opposite track." The passenger passed out at the forward end, where he found the collector, gave up his ticket, and passed out at the left, on the track, with the knowledge of the collector, and without any objection on his part. In crossing he was struck by an engine coming from an opposite direction, which had not observed the rule to stop. He brought suit to recover damages for the injuries which he had suffered. The company set up the defence of contributory negligence. Plaintiff, as a witness in his own behalf, testified

that he had never seen the notice posted in the car, and that he had been in the habit of alighting on the left side, without objection. When plaintiff rested, the defendant asked the court to instruct the jury to find a verdict for it on the ground that the contributory negligence of the plaintiff was established as matter of law. The court declined, and the defendant introduced evidence, and did not renew his request, but excepted to such parts of the charge as related to the question of contributory negligence. Verdict and judgment being had for plaintiff, the case was brought here by writ of error. *Held*, (1) That there was no doubt of the gross negligence of the defendant; (2) That there was no obligation on the part of the plaintiff to cross the track by the underground public street; (3) That the plaintiff was not, under the circumstances, guilty of negligence in law, in turning to the left on leaving the car; (4) That the charge was, as a whole, sufficiently favorable to the defendant, and that the question of negligence was properly left to the jury. *Chicago, Milwaukee & St. Paul Railway Co.* v. *Lowell*, 209.

NEW TRIAL, MOTION FOR.

See JURISDICTION, B, 15.

OFFSET.

See LONGEVITY PAY, 2.

PATENT FOR INVENTION.

1. The invention patented to Henry A. Adams by letters patent No. 132,128, dated October 15, 1872, for a new and useful improvement in corn-shellers, is a substantial and meritorious one, well worthy of a patent, and is infringed by machines manufactured under sundry letters patent granted to Harvey Packer. *Keystone Manufacturing Co.* v. *Adams*, 139.
2. When, in a class of machines widely used, it is made to appear that, after repeated and futile attempts, a machine has been contrived which accomplishes the result desired, and a patent is granted to the inventor, the courts will not adopt a narrow construction, fatal to the grant. *Ib.*
3. While it is undoubtedly established law that complainants in patent cases may give evidence tending to show the profits realized by defendants from use of the patented devices, and thus enable the courts to assess the amounts which the complainants are entitled to recover, yet it is also true that great difficulty has always been found, in the adjudicated cases, in applying the rule that the profits of the defendant afford a standard whereby to estimate the amount which the plaintiff is entitled to recover, and in defining the extent and limitations to which this rule is admittedly subject. *Ib.*

4. Such a measure of damages is of comparatively easy application where the entire machine used or sold is the result of the plaintiff's invention; but when, as in the present case, the patented invention is but one feature in a machine embracing other devices that contribute to the profits made by the defendant, serious difficulties arise. *Ib.*
5. The record shows that the complainant did not seek to recover a license fee, nor did he offer any evidence from which his damages could be computed. He relied entirely on the proposition that the amount which he was entitled to recover could be based on the profits realized by the defendant from the sale of the patented invention, and the amount of such profits he claimed to have shown by evidence tending to show what certain third companies were alleged to have made from the sale of similar devices in similar corn-shelling machines. *Held*, that he could recover only nominal damages. *Ib.*
6. No patent can issue for an invention actually covered by a former patent, especially to the same patentee, although the terms of the claims may differ. *Miller* v. *Eagle Manufacturing Co.*, 186.
7. The second patent, in such case, although containing a claim broader and more generical in its character than the specific claims contained in the prior patent, is also void. *Ib.*
8. But where the second patent covers matter described in the prior patent, essentially distinct and separable, and distinct from the invention covered thereby, and claims made thereunder, its validity may be sustained. *Ib.*
9. A single invention may include both the machine and the manufacture it creates, and in such case, if the inventions are separable, the inventor may be entitled to a monopoly of each. *Ib.*
10. A second patent may be granted to an inventor for an improvement on the invention protected by the first, but this can be done only when the new invention is distinct from, and independent of, the former one. *Ib.*
11. It is only when an invention is broad and primary in its character, and the mechanical functions performed by the machine are, as a whole, entirely new, that courts are disposed to make the range of equivalents correspondingly broad. *Ib.*
12. The invention claimed and protected by the letters patent issued June 7, 1881, to Edgar A. Wright, for new and useful improvements in wheeled cultivators, was anticipated by the claim in letters patent No. 222,767, granted to him December 16, 1879, for improvements in wheeled cultivators. *Ib.*
13. The first claim in the said letters patent of June 7, 1881, was anticipated by letters patent No. 190,816, issued May 15, 1877, to W. P. Brown for an improved coupling for cultivators. *Ib.*
14. The said letters patent of December 16, 1879, in view of the state of the art at that time, are to be limited and restricted, if they have any validity, to the specific spring therein described; and, as thus restricted,

they are not infringed by the sale of cultivators manufactured by P. P. Mast & Co. in accordance with various letters patent owned by them. *Ib.*

15. Reissued letters patent No. 9307, granted July 20, 1880, to John F. Wollensak for new and useful improvements in transom lifters and locks, on the surrender of the original letters patent No. 136,801, dated March 11, 1873, are void for want of patentable novelty in the invention described and claimed in them. *Wollensak* v. *Sargent*, 221.
16. Reissued letters patent No. 10,264, granted December 26, 1882, to John F. Wollensak for a new and useful improvement in transom lifters, on the surrender of the original letters patent, dated March 10, 1874, are void as to the claims sued on, by reason of laches in the application for a reissue. *Ib.*
17. The fact that the patentee followed the advice of his solicitor in delaying to apply for the reissue within due time does not justify the delay. *Ib.*
18. Letters patent No. 379,644, granted March 20, 1888, to Michael Haughey for an improvement in interfering devices for horses, in view of the state of the art at that time as shown by the evidence, are void for want of patentable novelty in the invention covered by them. *Haughey* v. *Lee*, 282.

PRACTICE.

1. An objection that an action is brought in the wrong district cannot be raised after the defendant has pleaded in bar. *Texas & Pacific Railway Co.* v. *Saunders*, 105.
2. This court cannot take notice of a stipulation of counsel as to evidence bearing on a finding of the court below in an action brought here by writ of error. *Fort Worth City Co.* v. *Smith Bridge Co.*, 294.

See APPEAL;
DAMAGES;
EVIDENCE, 10, 17;
EXCEPTION;
JUDGMENT;
JURISDICTION, B, 14; D, 6, 8;
STATUTE, B;
VERDICT.

PUBLIC LAND.

See EQUITY, 1;
MINERAL LAND.

RAILROAD.

See CONSTITUTIONAL LAW, 6, 7, 8, 9;
EQUITY, 1;
EVIDENCE, 2, 3;
EXCEPTION, 1;
JURISDICTION, D, 3;
NEGLIGENCE;
RECEIVER;
STATUTE, B.

RECEIPT.

A receipt signed by a claimant against the United States for a sum less than he had claimed, paid him by the disbursing agent of a depart-

ment, "in full for the above account," is, in the absence of allegation and evidence that it was given in ignorance of its purport, or in circumstances constituting duress, an acquittance in bar of any further demand. *De Arnaud* v. *United States*, 483.

RECEIVER.

A Circuit Court of the United States having appointed a receiver of a railroad in 1885, and the receiver having, during his possession of the property, used a very large amount of the net earnings in improving it, whereby it had been made much more valuable, the court, on the expiration of the receivership, ordered, on the 26th October, 1888, the receiver to transfer the property with its improvements to the company, and that it should be received by the company, charged with operation liabilities, and subject to judgments rendered or to be rendered in favor of intervenors, and that all claims against the receiver up to October 31, 1888, be presented and prosecuted by intervention prior to February 1, 1889, or be barred and be no charge upon the property. On the 14th of September, 1888, J. brought suit against the receiver in a state court to recover for personal injuries suffered by reason of defects in the road. On the 17th of December, 1888, the complaint was amended by making the railway company a party defendant. The receiver set up his receivership and discharge. The company denied liability for any injury inflicted during the receivership; and among other grounds of defence set up that the plaintiff below was subject to the order of October 26, and must resort to the court which entered it for the collection of his claim; that he could not recover a judgment *in personam;* and that the claim was barred by the terms of the order. The case was dismissed in the trial court as to the receiver, and judgment was given against the company, which judgment was sustained by the highest court of the State on appeal. The latter court held, in its opinion, that the company having received the property under the circumstances described, was bound by the acts of the receiver, and held the property charged with any claim which he ought to have paid out of earnings; that the receiver having been discharged, the property in the hands of the company was released from the custody of the Circuit Court and subject to any claim that might rest against it; that the order of the Circuit Court was not binding on the plaintiff as affecting his right to enforce his claim by suit; that the time in which such action should be commenced was fixed by law and could not be altered by order of court; that, under the act of March 3, 1888, 24 Stat. 552, c. 373, as amended by the act of August 13, 1888, 25 Stat. 433, c. 866, the state court had jurisdiction of the case, and the prosecution of the claim in that court could not be prevented; and that under the circumstances the suit could be maintained against the company. A writ of error was sued out to this court. *Held,* (1) That the overruling of the defence set up by

the company amounted to a decision against the validity of the order of the Circuit Court, or against a claim of right or immunity thereunder, which gave this court jurisdiction under the writ of error; (2) That the state court had jurisdiction under the acts of Congress above cited to proceed to final judgment in the case, and that it was not necessary to submit that judgment to the Circuit Court; (3) That after February 1, 1889, those who had not intervened in the suit in the Circuit Court were remitted to such other remedies as were within their reach; (4) That as the highest court of the State had held, on other than Federal grounds, that the company was directly liable to the plaintiff below, its judgment should be affirmed. *Texas & Pacific Railway Co.* v. *Johnson*, 81.

REMITTITUR.

See JUDGMENT.

REMOVAL OF CAUSES.

1. A township in Kansas delivered twenty-two of its bonds to a railroad company to aid in the construction of the company's road. The company contracted with B. to construct the road, and to receive these bonds in part payment. The bonds were delivered during the progress of the work to B., and to M., a non-resident of Missouri, as trustee, jointly, and were by them deposited in a Missouri savings institution in St. Louis to remain there until the completion of the work, and then to be delivered to B. upon the demand of himself and M. B., claiming that he had performed all the work under his contract, demanded the bonds. The association refused to deliver them except upon the joint order of B. and M. B. brought suit in St. Louis to recover them, making the association and the company defendants and serving process upon them, and making M. a defendant and serving upon him by publication. The township on its own motion intervened and was made party defendant. The savings association, M., and the township each answered separately. The railroad company was not served with process and made no answer. M. and the township then petitioned for the removal of the cause to the Circuit Court of the United States, setting forth that they were citizens of Kansas, that the plaintiff was a citizen of Missouri, and that the savings association had no interest in the result of the controversy. The prayer of the petition was granted, the cause was removed, and it proceeded to judgment in the Circuit Court. *Held*, (1) That the savings association was a necessary and indispensable party to the relief sought for, and as that defendant was a citizen of the same State with the plaintiff, there was no right of removal on the ground that it was a formal, unnecessary, or nominal party; (2) That the removal could not be sustained on the ground that the controversy

was a separable controversy between the plaintiff and the parties applying for and securing the removal. *Wilson* v. *Oswego Township*, 56.

2. Under the provision of the act of March 3, 1887, c. 373, authorizing an action, brought in a court of a State between citizens of different States, to be removed into the Circuit Court of the United States "by the defendant or defendants therein, being non-residents of that State," a defendant corporation must be created by the laws of another State only, in order to entitle it to remove the action; and if it is such a corporation, and has not been also created a corporation by the laws of the State in which an action is brought against it by a citizen thereof, it may remove the action, even if it has been licensed by the laws of the State to act within its territory, and is therefore subject to be sued in its courts. *Martin* v. *Baltimore & Ohio Railroad Co.*, 673.
3. Under the provision of the act of March 3, 1887, c. 373, by which a petition for the removal of an action from a court of a State into the Circuit Court of the United States is to be filed in the state court at or before the time when the defendant is required by the laws of the State, or by rule of the state court, "to answer or plead to the declaration or complaint of the plaintiff," the petition should be filed as soon as the defendant is required to make any defence whatever, either in abatement or on the merits, in that court. *Ib.*
4. The objection that the Circuit Court of the United States has no jurisdiction of a case removed into it from a state court, because the petition for removal was filed too late in the state court, is waived if not taken until after the case has proceeded to trial in the Circuit Court of the United States, and cannot be taken for the first time in this court on writ of error to that court. *Ib.*

See INTERSTATE COMMERCE, (1).

STATUTE.

A. CONSTRUCTION OF STATUTES.

See CUSTOMS DUTIES, 1.

B. STATUTES OF THE UNITED STATES.

See CIRCUIT COURT COMMISSIONER;
CONSTITUTIONAL LAW, A, 2;
COURT AND JURY, 5;
CRIMINAL LAW, 1, 9;
CUSTOMS DUTIES, 1, 2, 3;
DAMAGES;
EVIDENCE, 11;
HABEAS CORPUS, 1;
JURISDICTION, B, 2, 3, 4, 9; D, 6, 7;
LIMITATION, STATUTES OF, 2;
LONGEVITY PAY, 1, 3;
RECEIVER;
REMOVAL OF CAUSES, 2, 3.

C. STATUTES OF STATES AND TERRITORIES.

Statutes of a State, creating railroad corporations, or licensing them to exercise their franchises within the State, if deemed by the courts of

the State public acts of which they take judicial notice without proof, must be judicially noticed by the Circuit Court of the United States sitting within the State, and by this court on writ of error to that court. *Martin* v. *Baltimore & Ohio Railroad Co.*, 673.

Connecticut. *See* CONSTITUTIONAL LAW, A, 5.
Georgia. *See* CONSTITUTIONAL LAW, A, 1.
Kentucky. *See* CONSTITUTIONAL LAW, A, 10.
Maryland. *See* JURISDICTION, B, 5.
Massachusetts. *See* LIMITATION, STATUTES OF, 1.
New Mexico. *See* LOCAL LAW, 3.
Oregon. *See* WILL.
South Dakota. *See* FRAUDULENT CONVEYANCE.
Texas. *See* JURISDICTION, D, 2, 6.
Utah. *See* CRIMINAL LAW, 4, 6; JURISDICTION, B, 16.
Wisconsin. *See* EQUITY, 1.

SUMMONS AND SEVERANCE.

See APPEAL.

SURVIVAL.

See ACTION, 1, 2, 3.

TAX AND TAXATION.

1. The Federal courts universally follow the rulings of the state courts in matters of local law, arising under tax laws, unless it is claimed that some right, protected by the Federal Constitution, has been invaded. *Lewis* v. *Monson*, 545.
2. When a person acquires tracts of land in Mississippi, designated by numbers upon an official map, which tracts are from year to year assessed according to those numbers, and the taxes paid as assessed, and a new official map is filed without his knowledge, with different divisions and a different numeration, he is not bound as matter of law to take notice of the new map; and if, after its filing, he pays his taxes under a mistake, intending in good faith to pay all his taxes, but fails to pay on a tract by reason of the changes in the map, and such tract is sold for non-payment of the tax, he remaining in possession, his title will prevail in an action by the purchaser to recover possession of it. *Ib.*

TORT.

1. If one maliciously interferes in a contract between two parties, and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrongdoer. *Angle* v. *Chicago, St. Paul, Minneapolis & Omaha Railway Co.*, 1.

2. When a man does an act which in law and fact is a wrongful act, and injury to another results from it as a natural and probable consequence, an action on the case will lie. *Ib.*

TOWN SITE.

See MINERAL LAND.

TRUST.

1. It is a general principle of law that a trust estate must bear the expense of its administration. *Meddaugh* v. *Wilson*, 333.

2. A corporation in Michigan was the owner of a large and valuable real estate. Three successive mortgages on this property were created, and a large amount of corporation bonds secured by them were issued. Suits being begun for the foreclosure of these mortgages, a receiver was appointed by the court to take possession of and hold all the mortgaged property. The corporation was then adjudged to be a bankrupt. Assignees were appointed, who appeared by counsel in the foreclosure suits and contested them. The property remained with the receiver, and never passed into the possession of the assignees. Negotiations took place, looking towards a sale of the property and a reorganization, which contemplated that a certain proportion of shares in the reorganization should be delivered to W. In the course of the negotiations, the amount which the assignees were entitled to receive, and the amount which should be paid to their counsel, were determined, with the assent of all parties. W. agreed to pay this sum to D. for them out of the moneys to be received by him. These negotiations fell through. New negotiations then took place, looking towards a different scheme for reorganization. Under these a decree of foreclosure was obtained, under which the property was sold to M. and W. No provision was made in the decree for the payment of the sums agreed to be due to the assignees and their counsel, but the court was informed that satisfactory arrangements had been made therefor. In the reorganization a large amount of stock was allotted to W., but not so much, in proportion to the full amount, as had been allotted to him by the previous arrangement. The claims of the assignees in bankruptcy being transferred to their counsel, the latter filed their bill in equity against W., to charge him as trustee with the payment of the claims of both assignees and counsel, by virtue of his holding the shares which had been allotted to him in the new company. A large amount of proof was taken, much of which is referred to by the court in its opinion, and, as the result of examination, it was *held*, (1) That W. had assumed the payment of the claims of the assignees in bankruptcy and of their counsel, and that these claims were a lien in equity upon the stock of the new corporation in his hands; (2) That W., having received in the

final arrangement a less amount of stock than was awarded to him when the amount of the claims in litigation was determined, those claims were subject to be scaled down proportionately; (3) And the majority of the court further held that, under the peculiar circumstances of the case, the plaintiffs should not be allowed interest. *Ib.*

See APPEAL;
EQUITY, 1.

VERDICT.

1. When a party who has obtained a verdict which the court deems excessive, consents to its reduction, and judgment is thereupon entered for the reduced sum, and the plaintiff receives that sum and acknowledges its receipt "in full satisfaction of this judgment," he may not repudiate the whole transaction, and obtain a judgment for the full amount of the verdict, on the ground that the court had no power to disturb the verdict. *Lewis* v. *Wilson*, 551.
2. A plaintiff may, in open court, consent to a reduction of a verdict, and the noting thereof in the journal entry of the judgment is sufficient evidence thereof. *Ib.*

WAIVER.

See EVIDENCE, 11.

WILL.

1. By the laws of Oregon in force in 1872, a testator was authorized and empowered to devise after-acquired real estate. *Hardenberg* v. *Ray*, 112.
2. A will in Oregon, duly executed May 15, 1872, and duly proved after the testator's death in 1886, in which he devised to his sister "all my right, title, and interest in and to all my lands, lots, and real estate lying and being in the State of Oregon," except specific devises previously made, and also "all my personal property and estate," shows an intent not to die intestate, and passes after-acquired real estate. *Ib.*

WITNESS.

See EVIDENCE, 11.